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31 ; *Young v. Gori*, 13 Abb. Pr. 14, note ; 42 Id. 311 ; *Manderback v. Mock*, 29  
*Chapman v. Briggs*, 11 Allen 547. But Id. 43 ; *Hoffman v. Toner*, 49 Id. 231 ;  
it seems this is not the construction in *McGregor v. Sibley*, 69 Id. 388.  
Pennsylvania : *Robinson v. Wallace*, 39 JOHN F. KELLY.  
Penn. St. 133 ; *Wieman v. Anderson*, Bellaire, O.

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*Supreme Court of Missouri.*

DESKINS v. GOSS.

A teacher in the public schools, in the absence of the establishment of any rule by the school board, has the right to adopt a rule to prevent his pupils using profane language, fighting or quarreling on their way to and from school, and may punish those infringing the rule by the use of the rod.

The opinion of the court was delivered by

NORTON, J.—This suit was brought to recover damages for alleged injuries inflicted by defendant on plaintiff in whipping him with a switch. The answer of defendant sets up that he was a teacher of the public school ; that plaintiff was one of the pupils of said school, and that for a violation by plaintiff of a rule of the school, in using profane language, quarreling and fighting with the other scholars of the school, he did, in order to preserve good order and discipline in the school and to promote its usefulness, chastise plaintiff with a switch, inflicting upon him reasonable and moderate punishment.

Plaintiff obtained judgment for \$9, from which the defendant has appealed. On the trial plaintiff offered evidence tending to show that the punishment inflicted was excessive ; that plaintiff did not use profane language to, or quarrel or fight with the other scholars. The defendant offered evidence tending to prove the facts set up in his answer, and the following agreed statement of facts was then read to the jury, viz : " That the defendant was at the time the employed teacher of the public school at which the plaintiff was a regular daily attendant on and during the day that the acts and conduct complained of occurred, and for which the defendant chastised him ; that the profane language used, the quarreling and fighting was done, if at all, one-half or three-fourths of one mile from the schoolhouse, after the school had been adjourned for the day and the scholars were on their way to their respective homes, and before they had reached them, and the punishment was inflicted the next day thereafter, when the plaintiff returned to the

school ; that the defendant, as teacher, had a standing rule against the use of profane language, quarreling or fighting among the scholars, either at the school house or on their way home, and often spoke of the rule in the presence of the school and the plaintiff ; that plaintiff was, at the time of the chastisement, 13 years of age, and that all this occurred in the county of Grundy, Mo."

The court then instructed the jury that under the evidence and pleadings the jury must find for the plaintiff, and refused to give several instructions asked by the defendant, to the effect that plaintiff while in attendance as a scholar was under the control of defendant as teacher, and that defendant had a right to punish him for an infraction of the rule put in evidence in the agreed statement of facts, and that the verdict of the jury should be for defendant unless they believed that the punishment inflicted was unreasonable or excessive.

It is this action of the court which is complained of as error, and we are of the opinion that the complaint is well founded. While it is provided in section 7045, Revised Statutes, that "the school board shall have power to make all needful rules and regulations for the government of the school in their district," if they failed to do so, the right of the teacher employed to conduct the school to adopt reasonable rules to promote good order and discipline arises out of the very nature of his employment, and the only question worthy of consideration which this record presents is, was the rule which forbade the use of profane language, quarreling or fighting among the scholars, either at school or on their way home, reasonable and promotive of good order and proper discipline of the school. It must be conceded without question that the rule, in so far as it forbade such acts on the part of the scholars while at school, was not only reasonable but necessary to the orderly conduct of the school.

But it may be insisted and doubtless was urged before the trial court, that so soon as the scholars were dismissed from school by the teacher his authority over them ceases, and that of the parent is resumed, and that therefore that portion of the rule which forbids such acts as are therein mentioned, while the scholars are on their way to their homes, is without sanction or authority. We are unwilling to go to this extent, believing it to be unsupported either by reason or weight of authority.

In the case of *Dritt v. Snodgrass*, 66 Mo. 286, this court went

to the extent of saying that when the pupil of a public school is released and sent back to his home, neither the teacher nor directors had any authority to follow him to his home and govern his conduct while under the parental eye. This court also, in the case of *King v. Jefferson City School District*, 71 Mo. 628, sustained the validity of a rule which provides that "any pupil absent six half days in four consecutive weeks, without satisfactory excuse, shall be suspended from school." In that case a pupil had played the truant and thereby become amenable to the operation of the rule and was expelled, and this court refused to interfere on the ground that the rule was a reasonable one. Truancy is an act committed out of the school-room, but being subversive of the good order and discipline of the school, may subject, as it did the scholar in this case, to suspension or expulsion.

If the effects of acts done out of the school-room while the pupils are returning to their homes, and before parental control is resumed, reach within the school-room, and are detrimental to good order and the best interests of the school, no good reason is perceived why such acts may not be forbidden and punishment inflicted on those who commit them : *Burdick v. Babcock et al.*, 31 Ia. 562-7; *Lander v. Seaver*, 32 Vt. 114; *Sherman v. Inhabitants of Charleston*, 8 Cush. 160.

The effects of the scholars using to and with each other obscene and profane language, quarreling and fighting among themselves on the way to their homes, would necessarily be felt in the school-room, engender hostile feelings between scholars, arraying one against the other as well as the partisans of each, and destroying that harmony and good-will which should always exist among the scholars who are daily brought in contact with each other in the school-room.

For the error committed in giving the plaintiff the first and second instructions and refusing those asked by the defendant, numbered two, three, four, five and seven, the judgment will be reversed and cause remanded. All concur.

By the old authorities it is said that the authority as to punishment of a teacher over a pupil is the same as that of the parent over the child: 1 Hawk P. C. (6th ed.) sect. 23; Bac. Abr. tit. *Assault and Battery*, C.; Pulton de Pace, 6 b. And some of the modern authori-

ties adopt this view: 1 Bish. Crim. L. (4th ed.) sect. 771; see *Fitzgerald v. Northcote*, 4 F. & F. 656; *Starr v. Lift-child*, 40 Barb. 541; *Commonwealth v. Seed*, 5 Clark P. L. J. 78. But such a broad rule has not gone unquestioned, even by the eminent commentators on the

laws of England: 1 Black. Com. 453; see Chitty's note; *State v. Burton*, 45 Wis. 150; s. c. 30 Am. Rep. 706; 18 Am. L. Reg. 233; *Lander v. Seaver*, 32 Vt. 114. In this latter case it was said: "The parent, unquestionably, is answerable only for malice or wicked motive, or an evil heart in punishing his child. This great, and to some extent, irresponsible power of control and correction is invested in the parent by nature and necessity. It springs from the natural relation of parent and child. It is felt rather as a duty than a power. \* \* \* This parental power is little liable to abuse, for it is continually restrained by natural affection, the tenderness which the parent feels for his offspring, an affection ever on the alert, and acting rather by instinct than reasoning. The schoolmaster has no such natural restraint. Hence he may not safely be trusted with all a parent's authority, for he does not act from the instinct of parental affection. He should be guided and restrained by judgment and wise discretion, and hence is responsible for their reasonable exercise."

In another case it was said: "The law having elevated the teacher to the place of the parent, if he is still to sustain that sacred relation, it becomes him to be careful in the exercise of his authority, and not make his power a pretext for cruelty and oppression. Whenever he undertakes to exercise it, the cause must be sufficient, the instrument suitable for the purpose; the manner and extent of the correction, the part of the person to which it is applied, the temper in which it is inflicted, all should be distinguished with the kindness, prudence and propriety which becomes the station:" *Cooper v. McJunkin*, 4 Ind. 290.

In Massachusetts, the court refused to instruct the jury "that a school teacher is amenable to the law in a criminal prosecution, for punishing a scholar, only when he acts *malo animo*, from vindictive feelings, or under the violent impulses of passion or malevolence; that he is not

liable for errors of opinion or mistakes of judgment merely, provided he is governed by an honest purpose of heart to promote, by the discipline employed, the highest welfare of the school and the best interest of the scholar; that he is liable in a criminal prosecution for punishing a scholar only when the amount of punishment inflicted is more than adequate to subdue the scholar and secure obedience to the rules of the school." This action of the court was held to be unobjectionable; and the following in substance was held to state the law correctly: "That a teacher had a right to inflict punishment upon a scholar; that the case proved was one in which such punishment might properly be inflicted; that the instrument used (a ferrule) was a proper one; that in inflicting corporal punishment a teacher must exercise reasonable judgment and discretion, and must be governed, as to the mode and severity of the punishment, by the nature of the offence, by the age, size and apparent power of endurance of the pupil; that the only question in this case was whether the punishment was excessive and improper; that if they should find the punishment to have been reasonable and proper, the defendant could not be deemed guilty of an assault and battery; but if upon all the evidence in the case they should find the punishment to have been improper or excessive, the defendant might properly be found guilty upon this complaint:" *Commonwealth v. Randall*, 4 Gray 36. A like conclusion was reached in Vermont, except that if there was any reasonable doubt whether the punishment was excessive, the teacher should have the benefit of the doubt: *Lander v. Seaver*, 32 Vt. 114.

The rule, however, is well established that the teacher has the right to chastise his pupil moderately; and whenever the correction as confessed by the pleadings, or as proven at the trial, appears clearly to have been excessive or cruel, it must be adjudged illegal: *Anderson v. State*, 3

Head. (Tenn.) 455; *Burlington v. Essex*, 19 Vt. 91; *Commonwealth v. Seed*, 5 Clark P. L. J. 78; *Morris's Case*, 1 City Hall Rec. 52; *Starr v. Liftchild*, 40 Barb. 541; *Link v. Bell*, 3 Quarterly L. Jr. 92; *State v. Mizner*, 45 Iowa 248; s. c. 50 Id. 145; s. c. 43 Am. Rep. 128.

If no rule of the school board prevents it, the teacher may punish the pupil within the bounds prescribed by law, even though he has an instruction from the father that the child must not be punished: *State v. Van Strang*, 3 Tenn. L. Rep. 19.

In case the punishment is proper the father is not excusable if he assault the teacher because of it: *Morris's Case*, 1 City Hall Rec. 52.

A pupil beyond the school-age is subject to punishment as any other pupil: *State v. Mizner*, 45 Ia. 248; s. c. 24 Am. Rep. 769; *Stevens v. Fassett*, 27 Me. 266.

The teacher is not confined to mere whipping; he may impose a reasonable restraint upon the person of the pupil, either by way of prevention or punishment of disorderly conduct: *Fitzgerald v. Northcote*, 4 F. & F. 656; Cooley on Torts 171.

The teacher is the absolute judge of the kind of punishment, with the limitation that it must be reasonable and usual, and not destructive of the object of the relation, or subversive, of the contract under which the relation exists: *Starr v. Liftchild*, 40 Barb. 541; see *Butler v. McLellan*, Ware 219, 230.

The object and design of punishment must always be kept in view. These have been stated as follows: "The legal objects and purposes of punishment in school are like the objects and purposes of the state in punishing a citizen. They are threefold: first, the reformation and the highest good of the pupil; second, the enforcement and maintenance of correct discipline in schools; and third, as an example to like evildoers: *State v.*

*Mizner*, 50 Ia. 145; s. c. 32 Am. Rep. 128.

No punishment is justifiable unless it is inflicted for some definite offence which the pupil has committed; and the pupil must understand what he is being punished for. If he does not know why the punishment is inflicted, the act is unlawful; it is subversive and not promotive of the true object of punishment, "and cannot be justified:" *State v. Mizner*, *supra*.

In the absence of proof the law presumes that a teacher punished his pupil for a reasonable cause and in a moderate and reasonable manner. This presumption, like all other legal presumptions, may be rebutted by proof: *State v. Mizner*, 50 Ia. 145; s. c. 32 Am. Rep. 128; *Hathaway v. Rice*, 19 Vt. 102.

The teacher has the right to show that the chastisement was reasonable, and for misconduct in school: *State v. Mizner*, 45 Ia. 248; s. c. 24 Am. Rep. 769.

In one case, in speaking of the extent of the punishment, it was said: "The welfare of the child is the main purpose for which pain is permitted to be inflicted. Any punishment, therefore, which may seriously endanger life, limbs or health, or shall disfigure the child, or cause any other permanent injury, may be pronounced in itself immoderate, as not only being unnecessary for, but inconsistent with, the purpose for which correction is authorized. But any correction, however severe, which produces temporary pain only, and no permanent ill, cannot be so pronounced, since it may have been necessary for the reformation of the child, and does not injuriously affect its future welfare. \* \* \* When the correction administered is not in itself immoderate, and not, therefore, beyond the authority of the teacher, its legality or illegality must depend entirely on the *quo animo* with which it was administered. Within the sphere of this authority the master is the judge when correction is required, and of the degree of correction necessary;

and like all others intrusted with a discretion he cannot be made penally responsible for error of judgment, but only for wickedness of purpose:" *State v. Pendergrass*, 2 Dev. & Bat. 365. In another case it was held in order to hold a teacher liable for chastising a pupil, the circumstances must show a strong reason to believe that he was actuated by bad and malevolent motives, using his legal authority for the gratification of a mind bent on mischief: *Commonwealth v. Seed*, 5 Clark P. L. J. 78.

Where a person took a child into his house to instruct, agreeing to instruct and protect him, and provide for his physical wants, he was, it was held, not entitled to turn him out into the street, withdraw his care and protection, and deny him the shelter and comfort of his home under the name or form of punishment. Such a mode of punishment was deemed neither reasonable nor usual: *Starr v. Litchfield*, 40 Barb. 541.

Two boys, attending a Catholic school, were absent one day, without leave, to attend the funeral of a Protestant child. The fathers of the boys ascertained that the superintendent of the school intended to whip the boys for attending the funeral, and they requested him not to punish them for that reason. On the boys returning to school, the teacher having them in immediate charge, required them to give an excuse for their absence from school without permission, on the day of the funeral, and on their refusal to give excuses, she gave them a note and directed them to take it to the superintendent's house, about fifty steps from the schoolhouse. As soon as they were outside of the schoolhouse they ran home and never delivered the note. The next day the superintendent entered the schoolroom and whipped the two boys, declaring at the time that the whipping was not for going to the funeral, but for their disobedience of the order of the teacher in charge requiring them to take and deliver her note to him. It was held

he, as defendant in an action for assault and battery, was not liable to a fine for such action on his part: *Danenoffer v. State*, 69 Ind. 295, 418; s. c. 35 Am. Rep. 216. On the second trial of the case it was held that he had a right to show that the administering of the punishment had nothing to do with the going to the funeral: *Danenoffer v. State*, 79 Ind. 75.

In a Vermont case it was held that excessive punishment could not be justified from the fact that the teacher acted in good faith and without malice, honestly believing the punishment was necessary for the discipline of the school and the welfare of the pupils: *Lander v. Seaver*, 32 Vt. 114.

Where the teacher beat the pupil, with the consent of the father, so severely that the latter died it was held that he was guilty of manslaughter: *R. v. Hopley*, 2 F. & F. 202.

If compulsory education has not been adopted by the legislature, the board of education, in the absence of an express statute, has no power to require a pupil to pursue a particular study in opposition to the father's desire; and a teacher is not justified in punishing the pupil for refusing to pursue the particular study: *Rulison v. Post*, 79 Ill. 567; *Morrow v. Wood*, 35 Wis. 59; s. c. 13 Am. L. Reg. 692; *State v. Migner*, 50 Ia. 145; s. c. 32 Am. Rep. 128. But a requirement by the teacher that a pupil in a grammar school must write English compositions was held reasonable; and on a refusal by a pupil, in the absence of any direction by the parent, to comply with the requirement it was also held he could be expelled by the teacher on that account: *Guernsey v. Pitkin*, 32 Vt. 224. The board of directors may adopt such a rule: *Sewell v. Board of Education*, 29 Ohio St. 89.

In the absence of any rule of the school board, or of a statute, a teacher has the power to suspend a pupil for good cause from the privilege of the school. It is

essential that the teacher should have such power, in the absence of the action of the board, to maintain order and discipline. He is responsible for the discipline of the school, and for the progress conduct and deportment of his pupils. "It is his imperative duty to maintain good order and require of his pupils a faithful performance of their duties. To enable him to discharge these duties effectually, he must necessarily have the power to enforce prompt obedience to his lawful commands. For this reason the law gives him the power, in proper cases, to inflict corporal punishment upon refractory pupils :'' *State v. Burton*, 45 Wis. 150 ; s. c. 30 Am. Rep. 706 ; 18 Am. L. Reg. 233. For this reason he has the power, under the limitations named, to suspend a refractory pupil. "The conduct of a recusant pupil may be such that his presence in the school for a day or an hour may be disastrous to the discipline of the school, and even to the morals of the other pupils. In such a case it seems absolutely essential to the welfare of the school that the teacher should have the power to suspend the offender at once from the privilege of the school ; and he must necessarily decide for himself whether the case requires that remedy. If he suspends the pupil, he should promptly report his action and his reason therefor, to the proper board :'' *State v. Burton*, *supra*. Yet a pupil cannot be suspended or expelled unless authorized by statute, either by the teacher or board of directors, except "for disobedient, refractory, or incorrigibly bad conduct :'' *Rulison v. Post*, *supra* ; *State v. Burton*, *supra* ; and perhaps a teacher has no power to *expel* him. Upon suspension the teacher may at once remove him from the school room, using such force as is necessary ; and he may call others to his aid, who may use a like force : *Stevens v. Fassett*, 27 Me. 266.

A recent ruling of the Supreme Court of Wisconsin will illustrate many of the above statements. The board of educa-

tion of a city established a rule requiring each pupil, when returning to school after recess, to bring into the school room a stick of wood for the fire. This rule was held void, because not "needful for government of the schools" within the meaning of the statute clothing the board with its powers : *State v. Board of Education*, ante, page 601.

It is often a question with teachers, pupils and parents how far the authority of the teacher extends when not at, or in the immediate vicinity of, the school-room or house. In practice and in principle he has the same control during school hours over the pupils while in the school house or in the school yard, or in the immediate vicinity, so long as he is not on the parent's own immediate place of residence, that he has in the school-room. In Vermont, it was decided that the teacher has supervision and control over the pupil from the time he leaves home to go to school until he returns home from school. This is a reasonable rule. It designates the point of time where the parent delivers the charge of the pupil over to the teacher, and where the latter yields it back to the parent. It is often necessary to the discipline of the school that the teacher should have such a control. Yet in this case it was also held, although the teacher had no general right to punish a pupil for misconduct committed after the dismissal of school for the day and the return of the pupil to his home, yet he might, on the pupil's return to school, punish him for any misbehavior, though committed out of school, which had a direct and immediate tendency to injure the school and subvert the master's authority : *Lander v. Seaver*, 32 Vt. 114. See *Murphy v. Board of Directors*, 30 Ia. 429, a case based on a statute.

In the Missouri decision, *Dritt v. Snodgrass*, 66 Mo. 286 ; s. c. 27 Am. Rep. 343, cited in the principal case, the statute gave the board of directors "power to make and enforce all needful

rules and regulations for the government, management and control of such schools and property as they think proper, \* \* \* not inconsistent with the law of the land." A board had adopted a rule that no pupil should, during a school term, attend a social party. A pupil of the school, with the permission of his parents, violated this rule, and was expelled by the board for so doing. It was said that the directors had no power to follow the pupil

home and govern his conduct while under the eye of his parent, and that the rule invaded the power and right of the parent. This point, however, was not directly decided; but it was held that as no malice, oppression, or wilfulness was shown on the part of the directors, they were not liable in damages.

W. W. THORNTON.

Crawfordsville, Ind.

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### *Supreme Court of Minnesota.*

#### TIERNEY v. MINNEAPOLIS & ST. LOUIS RAILWAY CO. ET AL.

It is incumbent upon a railway corporation, in the discharge of its duty as master, not only to provide machinery and instrumentalities for its employees which are suitable and safe, but also to use reasonable diligence to keep them so. Necessarily incident to these obligations is the duty of frequent inspection, and the corporation, acting by its servants in the discharge of such duty, is liable for their negligence.

By a regulation governing the employees in the transfer-yard of a railway company, car inspectors were required to inspect incoming cars immediately upon their arrival, and if out of repair to mark them "in bad order," indicating that they were to be sent to the "repair track." Held, that negligence on the part of the inspectors in failing to properly discharge this duty, by reason of which plaintiff was injured while attempting to couple a damaged car without notice of its condition, and without fault on his part, might be imputed to the company.

It will not be presumed under such circumstances that the plaintiff assumed the risk of such negligent inspection, unless it appear that he undertook to handle cars in the course of his employment without reference to inspection.

MITCHELL, J., dissents, on the ground that the car inspector was a fellow servant with the employees engaged in making up the train.

A witness who is not an expert may testify to facts within his knowledge and observation in reference to the health and physical condition of an injured person.

APPEAL from an order of the District Court, Freeborn county, denying motion for new trial.

*Lovely & Morgan*, for respondent.

*J. D. Springer* and *Whytock & Todd*, for appellants.

The opinion of the court was delivered by

VANDEBURGH, J.—It is admitted that the defendants jointly owned, maintained and occupied a yard in common at Albert Lea, where trains were made up to be sent over their respective lines. The respondent had charge of the making up of night trains in the yard, and was injured in the course of his employment, while